

<b>U.S. Bank N.A. v Speller</b>
2026 NY Slip Op 31151(U)
March 24, 2026
Supreme Court, Putnam County
Docket Number: Index No. 500088/2022
Judge: Victor G. Grossman
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SUPREME COURT – STATE OF NEW YORK  
Present: HON. VICTOR G. GROSSMAN, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF PUTNAM

-----X  
U.S. BANK NATIONAL ASSOCIATION not in its  
Individual Capacity but Solely as Trustee for the  
RMAC TRUST, SERIES 2016-CTT,

Plaintiff,

-against-

MICHAEL M. SPELLER, ELLEN M. FITZSIMMONS,  
et al.,

Defendants.

To commence the statutory time  
period for appeals as of right  
(CPLR 5513[a]), you are advised  
to serve a copy of this order, with  
notice of entry, upon all parties.

Index No. 500088 / 2022  
Mot. Seq. No. 12

-----X     **DECISION**

This is a residential mortgage foreclosure action. By prior Decision and Order dated October 31, 2023, the Court determined that the retroactive application of certain discrete provisions of the Foreclosure Abuse Prevention Act would be constitutionally infirm. The Court subsequently found that the Plaintiff lacked standing to prosecute the action and dismissed the Complaint. Defendants now move for an order pursuant to CPLR §5015(a)(4) vacating the October 31, 2023 Decision and Order on the purported ground that in the absence of notice to the Attorney General pursuant to CPLR §1012 and Executive Law §71 the Court lacked jurisdiction to adjudicate the constitutionality of the Foreclosure Abuse Prevention Act.<sup>1</sup>

CPLR §5015(a)(4) provides in pertinent part that “[t]he court which rendered a judgment or order may relieve a party from it...upon the ground of lack of jurisdiction to render the judgment or order.”

<sup>1</sup> Defendants also invoke CPLR §5015(a)(3). However, Plaintiff’s failure to notify the Attorney General as required by CPLR §1012 and Executive Law §71 was neither intrinsic nor extrinsic fraud, and does not constitute “fraud, misrepresentation or other misconduct” within the meaning of Section 5015(a)(3).

CPLR §1012(b) provides in pertinent part that:

1. When the constitutionality of a statute of the state...is involved in an action to which the state is not a party, the attorney-general shall be notified and permitted to intervene in support of its constitutionality.

.....

3. The court having jurisdiction in action or proceeding in which the constitutionality of a state statute...is challenged shall not consider any challenge to the constitutionality of such state statute...unless proof of service of the notice required by this subdivision is filed with such court.

To the same effect is Executive Law §71. Defendants contend that due to Plaintiff's failure to give notice to the Attorney General as required by CPLR §1012(b)(1) and Executive Law §71(1), the Court was by virtue of CPLR §1012(b)(3) and Executive Law §71(3) deprived of "jurisdiction" -- within the meaning of CPLR §5015(a)(4) -- to consider Plaintiff's challenge to the constitutionality of retroactive application of the Foreclosure Abuse Prevention Act.

The Court of Appeals addressed the meaning of the term "jurisdiction" for purposes of CPLR §5015(a)(4) in *Lacks v. Lacks*, 41 NY2d 71 (1976). The Court wrote:

In *Thrasher v. United States Liab. Ins. Co.*, 19 NY2d 159, 166..., this Court, in discussing subject matter jurisdiction, drew a clear distinction between a court's competence to entertain an action and its power to render a judgment on the merits (*accord Burnet v. Desmornes*, 226 U.S. 145, 147...(Holmes, J.)). **Absence of competence to entertain an action deprives the court of 'subject matter jurisdiction'; absence of power to reach the merits does not.**

*Lacks v. Lacks*, *supra*, 41 NY2d at 75 (emphasis added). *See also*, *Artibee v. Home Place Corporation*, 28 NY3d 739, 747 (2017) ("This Court has observed that '[j]urisdiction is a word of elastic, diverse, and disparate meanings' [*Lacks v. Lacks*, 41 NY2d 71, 74...(1976)]. It can refer to 'a court's competence to entertain an action,' as well as to the court's 'power to render a judgment on the merits', which does not relate to subject matter jurisdiction [*id.* at 75...]).

The *Lacks* Court continued:

... '[T]he Supreme Court is a court of original, unlimited and unqualified jurisdiction' and competent to entertain all causes of action unless its jurisdiction has been specifically proscribed' (*Kagen v. Kagen*, 21 NY2d 532, 537...; *Thrasher v. United States Liab. Ins. Co.*, 19 NY2d 159, 166...; see N.Y.Const., art. VI, §7).

Against the State Constitution's broad grant of jurisdiction to the Supreme Court, defendant offers the language of Section 230 of the Domestic Relations Law. It provides merely that '[a]n action\*\*\*for divorce or separation may be maintained only when' the residence requirements are met. Not even the catchall word 'jurisdiction' appears in the statute, much less an explicit limitation on the court's competence to entertain the action. In no way do these limitations on the cause of action circumscribe the power of the court in the sense of competence to adjudicate causes in the matrimonial categories...

.....

Hence, any error of law or fact which might have been committed in the divorce action did not deprive the court of jurisdiction to adjudicate the case, CPLR 5015 (subd. [a], par. 4) is inapplicable, and Special Term erroneously vacated the final judgment.

*Lacks v. Lacks*, *supra*, 41 NY2d at 75-77.

The key distinction made by the Court in *Lacks* is that between the "absence of competence to entertain an action" – which deprives the court of "jurisdiction" for purposes of CPLR §5015(a)(4) – and the "absence of power to reach the merits" -- which does not. See, *Lacks v. Lacks*, *supra*, 41 NY2d at 75. CPLR §1012(b) and Executive Law §71 reference the court's "having *jurisdiction* in action or proceeding in which the constitutionality of a state statute is challenged" but *limit the court's power to reach the merits* of a constitutional challenge absent notice to the Attorney General. The statutory limitation on Supreme Court's *power to reach the merits* does not limit, qualify or proscribe Supreme Court's *jurisdiction*. Indeed, the Legislature has no authority to limit by statute the Supreme Court's constitutionally prescribed jurisdiction. See, *People v. Correa*, 15 NY3d 213 (2010).

In *People v. Correa*, the Court of Appeals wrote:

To determine the scope of Supreme Court's jurisdiction, we first look to the New York Constitution, which provides: "The supreme court shall have general original jurisdiction in law and equity and the appellate jurisdiction herein provided" (N.Y. Const., art. VI,

§7(a)]. Under this provision, Supreme Court “is competent to entertain all causes of action[] unless its jurisdiction has been specifically proscribed” (*Thrasher v. United States Liab. Ins. Co.*, 19 NY2d 159, 166...)

*People v. Correa, supra*, 15 NY3d at 227. The *Correa* Court observed that Supreme Court’s jurisdiction is limited elsewhere in the New York Constitution, by the Supremacy Clause of the United States Constitution, and by substantive limitations imposed on all courts by provisions of the federal and state constitutions. *See, id.* at 227-228. However:

...[T]he Legislature cannot by statute deprive [Supreme Court] of one particle of its jurisdiction, derived from the Constitution (Art. VI)...any effort by the Legislature to “abridge, limit or qualify” the broad jurisdiction conferred under article VI, §7 would be “unconstitutional and void” (*People v. Darling*, 50 AD2d 1038...[3d Dept. 1975]).

*People v. Correa, supra*, 15 NY3d at 229.

In view of the foregoing, CPLR §1012(b)(3) and Executive Law §71(3) may not constitutionally be construed as abridging, limiting or qualifying the *jurisdiction* of this Court. Rather, those statutes imposed a condition precedent – i.e., notice to the Attorney General -- on the Court’s *power to reach the merits* of a constitutional challenge to the Foreclosure Abuse Prevention Act. A decision and order rendered in violation of the statutory condition precedent is correctible by normal appellate process. However, as the CPLR and the Executive Law do not and could not deprive the Supreme Court of jurisdiction to render the order, relief pursuant to CPLR §5015(a)(4) is unavailable. *See, Lacks v. Lacks, supra*.

Therefore, the Court declines to issue the proposed Order to Show Cause.

Dated: March 24, 2026  
Carmel, New York

ENTER



HON. VICTOR G. GROSSMAN, J.S.C.